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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte HOLGER BELLMANN, GUDRUN MENRAD, JURGEN WOLF,
HEINZ MOHL, HANS HILLNER, JUERGEN SCHIEMANN,
and GEORG MALLEBREIN

Appeal No. 2008-1942
Application No. 09/166,496
Technology Center 3600

Decided: September 24, 2008

Before WILLIAM F. PATE, III, ANTON W. FETTING and JOSEPH A.
FISCHETTI, *Administrative Patent Judges*.

PATE, III, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

This is an appeal from the final rejection of claims 1, 3, 12, and 14. Claims 2, 4-11, 13 and 15-20 stand allowed. We have jurisdiction under 35 U.S.C. §§ 134 and 6(b) (2002).

The claimed invention is directed to a control device for controlling a system. The control device is characterized by a plurality of activatable modules, a

scheduler activating the activatable modules, and a priority manager that modifies the respective priority values of at least one of the activatable modules. Claim 12 is directed to the method for operating such a control device.

Claim 1, reproduced below, is further illustrative of the claimed subject matter.

1. A control device for controlling a system, comprising:

a plurality of activatable modules, each of the activatable modules having a respective corresponding priority value;

a scheduler activating the activatable modules as a function of the respective corresponding priority value of each of the activatable modules to provide activated modules, the activated modules generating data by analyzing states of the system; and

a priority manager continuously modifying the respective corresponding priority value of each of at least one of the activatable modules individually to one of increase and decrease the respective corresponding priority value relative to the priority value of another of the activatable modules.

The reference of record relied upon by the Examiner as evidence of lack of novelty is:

Sherrod

4,642,756

Feb. 10, 1987

Claims 1, 3, 12 and 14 stand rejected under 35 U.S.C. § 102 as unpatentable over Sherrod.

Conclusions of Law re Claim Construction and Findings of Fact

We are in agreement with the Examiner that the language in claims 1 and 12 on appeal is reasonably broadly construed. Accordingly, it is our finding that the tasks discussed in the Sherrod reference are identical to Appellants' claimed modules. That the tasks are activatable is clear from their very name. Tasks are something to be performed. With respect to the scheduler and priority manager, we note that Sherrod discloses that both of these functions are performed by the

task scheduler 6'. See, for example, col. 5, ll. 54-57 wherein it clearly states that the task scheduling method of the present invention has two parts: (1) selection of a task for execution by CPU 5'; and (2) assignment of a task state (and associated internal priority) to tasks. Note further, col. 6, ll. 4-19, which describes the two functions performed by task scheduler 6'. In other words, Sherrod states that the first function is a scheduler activity, because the task scheduler 6 schedules the task in the order that they are to be performed. Furthermore, the task scheduler 6' also assigns states i.e., priorities to the various tasks. The task states that can be assigned to the interactive tasks are enumerated in table 3 in column 8, and the function of the task scheduler 6' portion which is the priority manager is discussed starting at line 37 in column 8. We note that not all task priorities are modified in the Sherrod disclosure. The so-called fixed priority tasks are not modified, whereas interactive priority tasks are modified. However, the independent claims on appeal merely claim modifying the corresponding priority value of at least one of the activatable modules, i.e., tasks. Therefore, it is our findings that Sherrod anticipates claims 1 and 12. The dependent claims are not argued by the Appellants, and they fall with claims 1 and 12 from which they depend.

ANALYSIS OF ARGUMENTS

Appellants argue in the Brief on page 4 that the storage and I/O peripherals are not activated modules generating data by analyzing states of the system. We note that the Examiner has clarified the rejection so that it is clear that the modules correspond to the tasks disclosed in the Sherrod reference.

Appellants argue that there is no priority manager distinct from the task scheduler 6' disclosed in Sherrod. On the contrary, Sherrod makes clear that the task scheduler 6' performs two discreet functions. We are in agreement with the

Appellants that the schedule or priorities of the external tasks of Sherrod are not changed, whereas the schedule or priority of the internal priority values are changed based on the state of the system. But, this is exactly what Appellants' claims require. The arguments in the Appeal Brief thus do not convince us of any error on the part of the Examiner.

Turning to the Reply Brief, Appellants state that the Examiner has given a very broad interpretation to the limitation that requires the activated modules to generate data by analyzing states of the system. Be that as it may, we are in agreement with the Examiner that Sherrod does perform this function. For example, in column 8 at line 37 there is described an internal priority task which is in the wait status until an I/O communications operation has been received. This I/O communications operation is clearly a change of state of the system. In response to the receipt of the completion of this task, the task internal priority is changed to the S\$TTFN state. See col. 8, ll. 37-52.

Appellants argue that this interpretation is clearly contrary to Appellants' specification and to the interpretation of those skilled in the art. We disagree. Sherrod literally satisfies the limitations of Appellants' claim in this regard, as explained above. Furthermore, the Appellants arguments with respect to the control device and system as they appear on the top of page 4 of the Reply Brief are directed to importing limitations from the Specification into the claimed subject matter. It would be error on the part of the Examiner to do so. Appellants' disclosure may be unambiguous. On the other hand, we regard Appellants' claims as also unambiguous and broader than Appellants' disclosure in this regard. Appellants' claims are simply not commensurate in scope with the relevant disclosure. With respect to Appellants' arguments respecting the scheduler and

priority manager, our findings clearly show that both components are found in scheduler 6' of Sherrod.

Appellants' arguments respecting the external priorities disclosed in Sherrod are simply irrelevant. We freely acknowledge that not all priorities are changed by the portion of scheduler 6' that assigns states i.e., priorities to the various tasks. It is only the internal priorities that are changed by this portion of scheduler 6'. However, the claim only requires that some tasks have their priorities changed. This is met by Sherrod. Furthermore, the passage previously cited in column 8 shows the priority of one of the internal priority tasks being changed with respect to the other tasks. The Examiner need not discuss inherency, for we have found that Sherrod explicitly discloses this structure or function depending on whether claim 1 or claim 12 is invoked.

CONCLUSION

Appellants have failed to convince us of any error on the part of the Examiner in rejecting claims 1, 3, 12 and 14. Accordingly, the rejection of these claims is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

JRG

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